

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ERVIN MIDDLETON,

Plaintiff,

vs.

OMELY TELECOM,

Defendant.

Case No. 2:13-cv-01367-GMN-GWF

**FINDINGS AND**  
**RECOMMENDATION**

This matter comes before the Court on Plaintiff Ervin Middleton's ("Plaintiff") failure to file an Amended Complaint pursuant to Order (#2).

This matter commenced on August 2, 2013, with the filing of Plaintiff Middleton's complaint and motion/application to proceed *in forma pauperis* (#1). Plaintiff's motion to proceed *in forma pauperis* was granted. The Court also dismissed the Complaint, without prejudice, for failure to state a claim upon which relief can be granted. Plaintiff was ordered to file an amended complaint by March 12, 2014.

Pursuant to Fed. R. Civ. P. 41(b), the Court may dismiss an action with prejudice if the Plaintiff fails to prosecute or to comply with these rules or a court order. Pursuant to Order #2, Plaintiff had until March 12, 2014 to file an amended complaint. Notice was mailed to Plaintiff on February 11, 2014. More than four months have elapsed since the order was mailed and Plaintiff has not filed an amended complaint. Accordingly,

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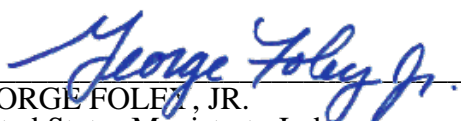
**RECOMMENDATIONS**

**IT IS HEREBY RECOMMENDED** that Plaintiff's complaint be **dismissed with prejudice.**

**NOTICE**

Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

DATED this 20<sup>th</sup> day of June, 2014.

  
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GEORGE FOLEY, JR.  
United States Magistrate Judge